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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

June 28, 2001

AO-01- 15

Carolyn Boudreau, Secretary
Scituate Republican Town Committee
P.O. Box 237
Scituate, MA 02066

Re: Political Activity by a Local Party Committee

Dear Ms. Boudreau:

This letter is in response to your June 7, 2001 request for an advisory opinion regarding the Scituate Republican Town Committee's ("the Committee") participation in a town election concerning a charter revision.

A charter revision campaign, pursuant to Article LXXXIX of the Amendments to the Massachusetts Constitution and M.G.L. c. 43B is expected to be undertaken in the town of Scituate. You have indicated that the Committee's charter allows the Committee to support local candidates and be active in local issue campaigns. Some members of the Committee might run for the charter commission and others plan on organizing a ballot question committee to raise and spend money in conjunction with this election. The Committee would also like to be active in the campaign. Accordingly, you have asked the following questions:

- (1) Can the Committee make in-kind contributions to the ballot question committee with money currently in its treasury?
- (2) Can the Committee raise funds to make additional in-kind contributions to the ballot committee?
- (3) Can the Committee make in-kind contributions to the commission candidates with money in its treasury?
- (4) Can the Committee raise funds to make additional in-kind contributions to the commission candidates?
- (5) Can Committee officers also be candidates for the charter commission given the Committee's desire to run an active campaign?

(6) Can the Committee purchase bumper stickers prior to the establishment to a ballot question committee to promote a petition drive for signatures?

Each of these questions relates to a broader issue, the extent to which the Committee may be active in the charter revision election. I have not attempted to set forth an answer to each question in the form and order you have presented them, choosing instead to address the larger issue and to allow my answers to your individual questions to be included in the following discussion.

As a town party committee chartered, in part, to support local issues and candidates, the Committee may, from its general treasury, make unlimited in-kind contributions to charter commission candidates¹ or ballot question committees formed in connection with the town charter revision election. The Committee can support candidates who are members of the Committee, including officers, and it may make expenditures, such as the purchase of bumper stickers, to promote the charter revision. See M.G.L. c. 55, § 6.

The Committee will, however, be subject to additional reporting requirements as the result of its charter revision activity. In addition to the reports that the Committee ordinarily files with OCPF,² if the Committee expends more than \$100 to influence the charter revision election, it must file Form CPF 102WTC with the local election official eight days prior to and thirty days after the town election, in accordance with M.G.L. c. 55, § 18, paragraph 2, clause (b) and (e)(2).³ See AO 97-14.

The Committee may also generally raise money to make further in-kind contributions to candidates or ballot question committees involved with the charter revision election, as a party committee can typically fundraise to support a slate of candidates or a particular policy issue. Notwithstanding, the Committee must be mindful that, in fundraising to support its legitimate interests, it does not raise money specifically to influence a ballot question, or otherwise solicit or receive contributions earmarked for a particular candidate or ballot question committee.

A contribution is deemed to be “earmarked” if it is given to a committee “with the intent, expectation or condition that it will subsequently be contributed to or used to support a particular candidate or candidates, or a particular committee or committees.” See AO-98-15. Earmarked contributions are prohibited because they have the effect of circumventing the campaign finance law’s contribution limits and its requirement that the true source of a contribution be accurately disclosed. See M.G.L. c. 55, §§ 6, 7, 7A & 10 and AO-98-15 (advising a state party committee that it may not focus its fundraising efforts on certain statewide offices).

Factors considered in determining if a contribution solicited by a party committee has been earmarked include: (1) the nature of the solicitation, i.e. the solicitation contains an express or implied assurance that funds will be used to support a particular candidate; and (2) the conduct of the contributor, i.e., the contributor provides a note asking that a contribution be used to support a particular candidate.

In short, the Committee may not serve as a “pass through” for funds intended for a candidate or another political committee. Moreover, the Committee would have to form a separate ballot question

¹ While there is no limit on the amount of in-kind contributions a party committee may provide a candidate, monetary contributions are limited to \$1000 per candidate per year. See M.G.L. c. 55, § 6.

² Town party committees file reports with OCPF according to the state election cycle. See M.G.L. c. 55, s. 18, paragraph 2, clause (e)(1).

³ To avoid possible confusion at a later time, we strongly recommend that a copy of such reports be filed with OCPF.

committee if it raises any money specifically to influence the charter revision ballot question. See AO 97-14. (advising a local party committee that the purpose for which it raised funds determined whether it would have to organize a separate ballot question committee in connection with a municipal election).

Of course, there is nothing in the campaign finance law to prevent Committee members from organizing another political committee or fundraising for a ballot question or candidate's committee. In this capacity, individual members may solicit contributions for another political committee. Such contributions, must be made payable to the ballot question committee or the candidate's committee in question. Pursuant to M.G.L. c. 55, § 23, the Committee members then have three business days from the date of receipt to provide the contributions, in their original form, along with a detailed record of each contribution, to the treasurer of the appropriate committee.⁴

If you wish to raise money specifically for the charter revision ballot question, I have enclosed the Campaign Finance Guide for Municipal Ballot Question Committees for your information. Please do not hesitate to contact our office if you wish to organize a municipal ballot question committee.

This opinion is issued on the basis of representations in your letter and is solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions about this opinion or any other aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:bp
Enclosures

⁴ Please note that § 23 also applies if the Committee makes expenditures or incurs any liabilities on behalf of a candidate or another committee.